In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 73

Office Supreme Court, U.S.

STATE OF ALASKA
and
WALTER J. HICKEL, Governor of the State of Alaska, G. KENT EDWARDS, Attorney General of the State of Alaska, THOMAS J. MOORE, Commissioner of Labor of the State of Alaska, LEO A. PHILLIPS, ALFRED M. WHITE and WILLIAM JONES, members of International Union of Operating Engineers, Local 302,

Appellants,

vs.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 302, AFL-CIO; WILLIAM TYREE, CLARK INGRAM, JAMES O. GREEN, KENNETH E. WRIGHT, DONALD E. CONNER, ARLIN A. DECHANEY, and NATIONAL LABOR RELATIONS BOARD,

Appellees.

Appeal from the United States District Court for the District of Alaska, Consolidated Cases Nos. J-18-67 and J-19-67, Reported in 287 F.Supp. 589 (D. Alaska, 1968)

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Pursuant to United States Supreme Court Rules 13(2) and 15, appellants file this statement indicating

the basis on which this Court has jurisdiction, on a direct appeal, to review the final judgment of permanent injunction in question and to exercise such jurisdiction through plenary consideration of the questions presented.

OPINION BELOW

The opinion of the three-judge District Court, constituting its findings of facts and conclusions of law, granted to appellees a permanent injunction prohibiting enforcement (a) of the Alaska Local Union Autonomy Act, Ch. 8, SLA 1967, Alaska Statutes 23.40.045 to 23.40.060, as amended in 1968, which the Court ruled unconstitutional in its entirety, and (b) of a preliminary injunction issued by the Superior Court of the State of Alaska, in a suit instituted by appellant State of Alaska, restraining conduct of appellee Local 302, found to constitute a public nuisance and to violate or infringe upon personal and property rights of resident union members in the State of Alaska through discrimination in hiring hall practices. Copies of the judgment below, the opinion of the United States District Court and the unreported opinion of the Alaska Superior Court issuing the preliminary injunction are appended to this jurisdictional statement.

JURISDICTION

The appeal herein is from a final judgment made and entered by a three-judge United States District Court for the District of Alaska, specially constituted

pursuant to 28 U.S.C. §§ 2281 and 2284 upon the appellees' application. Appellees sought a declaratory judgment decreeing an Alaska statute, the "Local Union Autonomy Act," Ch. 8, SLA 1967, codified as AS 23.40.045 to 23.40.060, as repugnant, *inter alia,* to the Supremacy Clause, Art. VI § 2, of the United States Constitution. Appellees further sought a permanent injunction restraining enforcement of the Alaska Superior Court's preliminary injunction which prohibited, during the pendency of the State action, acts of public nuisance, job discrimination and denial of fair representation to its members, by appellees, representing a continuing danger to the public welfare of Alaska residents.

The District Court held the Alaska Local Union Autonomy Act unconstitutional in its entirety as a violation of the Supremacy Clause, and permanently restrained its enforcement on the ground that it applied on its face to subject matter pre-empted by the Labor Management Relations Act, 29 U.S.C. §§ 151 *et seq.* (L.M.R.A.) The statute (AS 23.40.050 *et seq.*, SLA 1967, Chap. 8) and the 1968 amendments thereto (SLA 1968, Chap. 231) are reprinted in full in the appendix. The District Court further permanently enjoined enforcement of the preliminary injunction of the Superior Court granted to appellants pursuant to State common law of public nuisance as well as under certain statutory authority (*vide infra*), on the same ground of pre-emption.

The final judgment appealed from was made on August 23, 1968 and entered on August 26, 1968.

Notice of appeal was filed in the United States District Court for the District of Alaska on September 9, 1968.

This Court has jurisdiction to review by direct appeal the judgment and decree in question, pursuant to 28 U.S.C. § 1253.

The following cases are believed to sustain directly the jurisdiction of the Supreme Court to review the judgment and decree on direct appeal and upon plenary consideration: *Vaca v. Sipes,* 386 U.S. 171 (1967); *Local Teamsters 174 v. Lucas Flour Co.,* 369 U.S. 95 (1962); *DeVeau v. Braisted,* 363 U.S. 144 (1960); *International Assn. of Machinists v. Gonzales,* 356 U.S. 617 (1958); *Youngdahl v. Rainfair,* 355 U.S. 131 (1957); *UAW v. Russell,* 356 U.S. 634 (1958); *United Construction Workers v. Laburnum Construction Corp.,* 347 U.S. 656 (1954.) In addition, an often-stated principle in the following cases is believed to further sustain jurisdiction: *Hill v. Florida,* 325 U.S. 538 (1945); *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236 (1959); *Local 100 of United Assn. of Journeymen & Apprentices v. Borden,* 373 U.S. 690 (1963); *Nash v. Florida Indust. Comm.,* 389 U.S. 235 (1967).

QUESTIONS PRESENTED

There are established exceptions to federal preemption in labor controversies. A primary exception to exclusive National Labor Relations Board jurisdiction are those cases involving an immediate and

overriding State interest, such as union-created practices of discrimination and acts constituting a public nuisance which endanger the welfare of entire communities. Another significant exception to pre-emption is where assertion of State Court jurisdiction over discriminary practices violative of a union's duty of fair representation to all its members presents no obstacle to and does not conflict with enforcement of the L.M.R.A.

Notwithstanding these exceptions, which are applicable both to enforcement of the Alaska Local Union Autonomy Act and the Alaska Superior Court's preliminary injunction (which is primarily concerned with the denial of fair representation) the District Court concluded that both the subject matter of the Alaska statute and of the State Court injunction were not within the ambit of permissible State Court jurisdiction. The District Court held both to be in conflict with a federal policy—the freedom of union members to choose their collective bargaining agents —a policy clearly peripheral to both the Act and the subject matter of the common law nuisance suit brought by appellants and equally clearly *not* in conflict with either.[1] The principal questions thereby presented are:

(1) Whether the Labor-Management Relations Act provides an adequate remedy against the economic and social harm to Alaska's citizens which the

[1]It should be noted that the Local Autonomy Act, by its terms, applies only to the International Union, while the State Court injunction was directed primarily at discriminatory acts on the part of appellee Local 302.

Alaska Superior Court found to constitute a public nuisance and a denial of fair representation.

(2) Whether the Alaska Local Union Autonomy Act, which *increases*, not decreases, the opportunity for free choice of local union representation, is an obstacle to the freedom of members of Local 302 to choose collective bargaining agents or adversely affects any other national labor policy and hence is within the preemption rule announced in *Hill v. Florida*, 325 U.S. 538 (1945).

(3) Whether the Alaska Superior Court injunction may reasonably be interpreted to impinge upon any area preempted by Congress, or, obversely, whether the duty of fair representation required of the International Union of Operating Engineers and whose standards have been established by the Court and not the NLRB, falls within the rationale of *Vaca v. Sipes*, 386 U.S. 171 (1967), and is thereby cognizable in a State Court proceeding.

STATEMENT OF THE CASE

International Union of Operating Engineers, AFL-CIO, is an international labor organization. Local 302 of the International Union has its headquarters in Seattle, Washington, and a clear majority of its members are Washington residents. The individual appellees are Seattle officials and members of the Local's management. For several years Local 302 has discriminated against its minority Alaska resident members by dispatching Seattle-resident members hun-

dreds and even thousands of miles to Alaska job sites instead of using local job pools, while flagrantly violating seniority rights of the Alaska members. Moreover, the persons in charge of Alaskan hiring halls, which enjoy a contractual monopoly with respect to Alaskan jobs in the vital construction industry, are appointed by Seattle based union officers and hold their powerful positions at the pleasure of officials dependent for their own tenure on the continued support of Washington residents.

This discrimination has resulted in serious problems of economic deprivation for the Alaska members, their families and for the communities in which they live. Because workers of the Local are transported during part of the year from Seattle to perform work otherwise available to Alaska members, the latter have suffered chronic unemployment, the highest, percentage-wise, of any State in the nation. The State of Alaska has been required to provide them with unemployment and welfare benefits, which would be unnecessary but for the Local's discriminatory dispatching practices. The purchasing power of the Alaska members and their families has long been reduced and the community as a whole suffers while Alaska workers remain idle and Washington workers return to their own state upon completion of job assignments, not infrequently only to draw upon and deplete Alaska's overburdened unemployment insurance funds. Concomitantly, Alaska employers, including the Alaska Chapter of the Associated Contractors of America, Inc., with whom Local 302 has a collective

bargaining agreement, must pay the imported workers' travel expenses and wages for travel time. These costs are passed on to the Alaska consumers without any corresponding benefits to Alaska.

These persistent discriminatory practices and resulting numerous complaints by Alaskan citizens led to investigations by the State Department of Labor and by the Alaska State Senate. As a result of these investigations the Alaska Legislature enacted the Local Union Autonomy Act to take effect on May 25, 1967. Despite passage of the Act, the discrimination nevertheless continued unchecked and took the additional form of increased pressure by non-Alaska union officials against members favoring establishment of an autonomous local union, as encouraged by the Local Autonomy Act. Indeed, it was found by a Special Labor-Management Committee of the Alaska State Senate, in a report dated July 17, 1967, that non-compliance with the Act was continuing unabated, causing widespread hardship, unemployment and serious unrest. Following the report, the Legislature amended the Act in 1968 and the Secretary of Labor promulgated an emergency regulation requiring international labor organizations with one hundred or more resident Alaska members to charter a local organization within Alaska.

On October 13, 1967, in an effort to end the continued discrimination and denial of fair representation to Alaskan members by Seattle based appellee Local 302, as well as to prevent further economic blight to local Alaska communities, the State of

Alaska filed a civil action in the State Superior Court, at Anchorage, to enjoin the discriminatory practices and to require Local 302 to perform its judicially defined duty of fair representation to all members of the Local.[2] The State concurrently filed a criminal action under the penal provisions of the Act; however, the State suspended the criminal proceeding and stipulated not to resume the same until the issue of preemption has been authoritatively decided.[3] The defendants in both actions were Local 302 and individual members responsible for the policy and acts of discrimination and for the continued and flagrant breach of their duty of fair representation of *all* members of the union, based on seniority and the hiring provisions of existing collective bargaining agreements.

On December 18, 1967, defendants filed a motion to dismiss the civil action on the ground, *inter alia,* that remedies sought by the State on behalf of all Alaska citizens were available under the Labor Management Relations Act through the NLRB (ignoring the fact that only union members could avail themselves of such *discretionary* remedies under the federal statute) and thereby covered a subject matter preempted by Congress. Even while the motion to dis-

[2]The action was brought pursuant to AS 23.05.060, empowering the Department of Labor to enforce all State labor laws; AS 23.05.130, authorizing the Department to assist resident workers with respect to employment rights; and AS 23.05.210, empowering the Attorney General to civilly prosecute cases referred to him by the Department of Labor.

[3]In a spirit of cooperation, no arrests were made, no bail required and non-resident defendants were allowed to appear through their counsel.

miss was under consideration, the discriminatory dispatching practices continued. The State accordingly moved, on January 11, 1968, for a preliminary injunction, supported by extensive documentation, to take effect during the pendency of the action.

On March 8, 1968, the Superior Court denied defendants' motion to dismiss and issued the preliminary injunction requested by the State, solely on the ground of public nuisance and discriminatory denial of fair representation;[4] it expressly refused to grant interim relief under the Local Autonomy Act. In granting the injunction the Court also found an overriding State interest in dealing with the widespread problems fostered by decades of job discrimination and hence it upheld its own jurisdiction. The discriminatory practices in job dispatching, the Court found, "are harmful, not only to the members against whom the discrimination is practiced, but to the people of the State of Alaska, in requiring the outlay of public funds for unemployment and welfare relief for such members and their families, and in depriving such members of earnings which would otherwise flow into the economy of the State and thereby benefit the citizens of the State generally." (Superior Court Opinion, at page 21.) The Court, in retaining jurisdiction, ruled against the preemption challenge raised by defendants in their motion to dismiss, as follows:

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[4]In seeking to assert the rights to fair representation of resident union members deprived of employment opportunities for long periods—and hence evidently impecunious, if not indigent, as against the rich and powerful International, the State asserted a right to act under the doctrine of *parens patriae*.

> "I find that the relief sought is not within an area which has arguably been preempted under the Supremacy Clause of the United States Constitution, but is, rather, in the nature of requiring that defendants provide the citizens of Alaska who are members of defendant Local 302 with the fair representation to which they, and the State and its citizens derivatively, are entitled. [citation] . . . I find no conflict with federal authority—'the touchstone of preemption' [citation]." (Superior Court Opinion, at 22.)

Two weeks after this civil action had been instituted by the State, Local 302 and its Seattle officials filed two actions (later consolidated) in the United States District Court for Alaska against the State of Alaska, and its Governor, Attorney General and Commissioner of Labor. The Union applied for a three-judge court to render a declaratory judgment that the Superior Court injunction was invalid and that the Local Autonomy Act was unconstitutional. The National Labor Relations Board was permitted to intervene as a party plaintiff, while adopting *in toto,* the argument of Local 302 that the NLRB held exclusive jurisdiction to decide the controversy at hand.

The State unsuccessfully moved to dismiss the empaneling of the three-judge court on the ground that convening of such a court is improper when the only substantial constitutional issue presented for determination is whether there is federal preemption under the Supremacy Clause.[5]

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[5]Defendants asserted constitutional challenges as follows: imposition of undue restraint on interstate commerce: impairment of contractual obligations; violation of equal privileges and im-

The District Court concluded that there was federal preemption without taking any testimony on the nature or degree of public harm to Alaska or of the overriding interest of the State in ending the discriminatory practices of Local 302. Without ruling on the validity of the State's interest in the case, the Court broadly held that the Local Autonomy Act and its implementing regulations "clearly indicate a state purpose which invades a field preempted by Congress. Impermissively, the Act interferes with the full freedom of workers to choose a bargaining agent (*sic*) and in the collective bargaining process.[6] Because of conflict with federal law and policy, both actual and potential, the Act, as amended, is therefore unconstitutional under the Supremacy Clause." (287 F. Supp. at 594.) There is no finding of fact—nor even a hint of rationalization—in the District Court opinion, as to just how the State Act violates the right of members of Local 302 to choose their collective bargaining agents, how it interferes with the collective bargaining process, how it conflicts with federal labor policy, or, in short, how it invades an area preempted either by the L.M.R.A. or any other congressional pronouncement.

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munities; abridgement of free speech and assembly. Since the District Court made no findings or conclusions on these issues, and since these challenges do not bear on Supreme Court jurisdiction to review this case on direct appeal, these grounds will not be discussed further here. See *California Water Service Co. v. Redding*, 304 U.S. 252 (1938). However, the jurisdiction of the Supreme Court on appeal extends to every question involved in the case. See *Sterling v. Constantin*, 287 U.S. 378 (1932).

[6]*N.B.* That the Alaska Local Autonomy Law only requires chartering of a local union as an additional choice of possible representative, and leaves the ultimate choice of collective bargaining representation to the Federally constituted legal processes.

The Superior Court injunction was similarly swept aside, as supposedly invading an area preempted by Congress, an area which assertedly provides the NLRB with exclusive jurisdiction to decide charges of discrimination against a union for violating its duty of fairly representing all its members. The enforcement of the injunction was summarily and permanently enjoined, and the officers, agents and employees of the State of Alaska were ordered not to enforce the Local Autonomy Act and its regulations. This appeal followed.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

A. THE CONSTITUTIONAL QUESTION OF FEDERAL PREEMPTION

The District Court has held the Alaska Local Union Autonomy Act unconstitutional in its entirely on the ground of its asserted direct conflict with the freedom of union members to choose collective bargaining agents.

This is a remarkable statutory construction, since the statute produces exactly the opposite effect from that envisioned by the Court. As a whole the Act promotes, rather than discourages collective bargaining, by permitting Alaska resident members of the International Union of Operating Engineers to select their own bargaining agents to fairly represent them.[7]

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[7]The last N.L.R.B. sponsored election gave Alaskan workers only a choice between the Seattle Local or "no union." Had the Local Autonomy Law been allowed to become operative, a third option—an Alaskan Local—would have been added to the free choice.

Because the statute eliminates the need for Alaska workers to rely on union officials who continuously have deprived them of their seniority rights and of their livelihood, unless they are prepared to reject union representation altogether, this does not serve to characterize the statute as an obstacle to federal labor policy. On the contrary, it would appear to support and effectively implement the objectives of that policy.

Under the statute, once an autonomous local of one hundred or more members is formed in Alaska, the national or international union thereby becomes exempt from the statutory duty to maintain hiring, dispatching and membership records. AS 23.40.045 (a). The requirement for maintenance of these records is, of course, to protect against the kind of systematic discrimination in job assignments practiced by Local 302 against its minority Alaska members, as found by the Alaska Legislature after a careful study of the facts—facts completely ignored by the District Court. The statute thus does not restrict nor even purport to affect in any manner the collective bargaining process. It exclusively concerns itself with establishing a degree of regulation over out-of-state unions asserting absentee control over Alaskan hiring halls, in order to prevent discriminatory conduct detrimental to the welfare of Alaska members, their families and communities.

The only section of the Act which even remotely concerns the collective bargaining process as such is § 23.40.050, which makes it unlawful for national or international unions with one hundred or more Alaska

resident members to fail to charter a local union within Alaska. This provision in effect *requires Local* 302 to either end its persistent unfair and discriminatory representation or to establish an Alaska local which will be available to represent its Alaska members if they so choose, within the framework of the L.M.R.A.

Such State promotion of a climate of fair representation cannot fairly be said to conflict with, or be an obstacle to any national labor policy. However, the District Court apparently concluded that even where a union has flagrantly and continuously violated the rights of many of its members, with widespread economic consequences, nevertheless the State's public interest in protecting the security and welfare of its citizens and residents does not permit it to take any corrective acts, either legislatively or judicially, irrespective of the quantum of harm or of the legitimate need for State intervention. This holding leaves no remedy to either Alaska or to its resident members of Local 302, for the National Labor Relations Board, in its unreviewable discretion, can—and regularly does—refuse to hear charges that Local 302 has engaged, in unfair labor practices in Alaska, under § 8(b) of the Labor Management Relations Act, 29 U.S.C. § 158(b). Compare, *Vaca v. Sipes,* 386 U.S. 171 (1967).[8]

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[8]Neither in *Vaca v. Sipes* (*supra*) nor in any previous case has this Court expressly approved the holding in *Miranda Fuel Co.*, 140 N.L.R.B. 181 (1962), *enforcem't den.* 326 F.2d 172 (2nd Cir. 1963), that a breach of the duty of fair representation must be classified as an unfair labor practice under §8(b), thereby giving the N.L.R.B. exclusive jurisdiction to entertain such cases.

In thus divesting the State Court of jurisdiction, the District Court has reached a result in direct conflict with the *rationale* of *Vaca v. Sipes,* (*supra*), which authorizes State Court jurisdiction in unfair representation cases. Other Supreme Court cases relied on by the District Court in ruling in favor of federal preemption refer to specific exceptions to preemption. These exceptions, here manifestly applicable, permit State legislative and judicial jurisdiction in cases of overriding State interest. The principles enunciated in both *Vaca* and the other decisions of this Court require the conclusion that the District Court erred in declaring unconstitutional the Local Autonomy Act and in precluding the exercise of State Court jurisdiction to enjoin the public nuisance created by Local 302. If the District Court opinion were allowed to remain intact, the authority of *Vaca,* as well as the interstitial federal-state character of labor problems peripheral to the L.M.R.A.—and hence without certainty of redress—would be seriously undermined.

The express language and purpose of the Local Autonomy Act clearly preclude a construction that the Act enters a restrictive area of national labor policy reserved to the exclusive jurisdiction of the NLRB. Those provisions of the Act which impose upon Local 302 the obligation to fairly represent its Alaska resident members do no more than reaffirm the traditional, judicially defined duty of a labor union to fairly represent all its members. *Vaca* clarifies the proposition that suits for breach of this duty are

cognizable in State courts, irrespective of whether the union conduct in question is also an unfair labor practice within the meaning of §8(b).[9]

Vaca holds that the preemption guidelines of *San Diego Building Trades Council v. Garmon,* 359 U.S. 236 (1959), are never to be rigidly applied, as did the District Court in the case at bar, to preempt State involvement in cases of unfair representation. As Mr. Justice White pointed out in the *Vaca* majority opinion, the withholding of preemption in cases of unfair representation does not injuriously affect national labor policy, since the standards of fair representation were first *judicially* developed and applied, and are the same standards now applied by the NLRB in unfair labor practice cases, where the General Counsel chooses to do so.[10]

Moreover, because the NLRB has traditionally not asserted jurisdiction in cases of unfair representation, while the courts have, the Board certainly possesses no greater expertise in this field than do the courts. The General Counsel of the NLRB, moreover, exercises unreviewable discretion in the issuance of complaints against unfair labor practices, and there thus is the clear risk—shown by Alaska's experience—that complaints of unfair representation will not be prose-

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[9] *Vaca* recognizes the doubtful efficacy of this belated recognition of the problem by the Board.

[10] See *United Construction Workers v. Laburnum Const. Corp.,* 347 U.S. 656 (1954); *Youngdahl v. Rainfair,* 355 U.S. 131 (1957); *UAW v. Russell,* 356 U.S. 634 (1958); *Teamsters Local 174 v. Lucas Flour Corp.,* 369 U.S. 94 (1962); *Vaca v. Sipes* (*supra*); *IAM v. Gonzales,* 356 U.S. 617 (1958).

cuted if the NLRB is allowed exclusive jurisdiction. Particularly in cases where a significant state interest overshadows the harm to individual employees, the theoretical need for a "consistent" labor policy to be administered by the NLRB becomes manifestly immaterial.

In the *Garmon* opinion, in reviewing earlier cases, this Court expressly characterized the outer boundaries of federal preemption as being at an end, "where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress has deprived the states of the power to act [citations to previous decisions]." (359 U.S. at 243-44.) The kind of compelling congressional direction the Supreme Court had in mind is reflected in cases like *Hill v. Florida*, 325 U.S. 538 (1945), and *Nash v. Florida Indust. Comm.*, 389 U.S. 235 (1967), where State legislation conflicts, with arguable certainty, with a clearly defined national policy and not merely with a theorized abstract federal preference.

The Court below relied strongly on *Local 100 of United Assn. of Journeymen and Apprentices v. Borden*, 373 U.S. 690 (1963), in attempting to distinguish *Vaca*. In mistakenly characterizing the purpose of the Superior Court preliminary injunction, the District Court stated as follows: "The alleged discrimination which is here prohibited by the Superior Court injunction—job referral discrimination to strengthen union authority (sic)—clearly is within the exclusive

jurisdiction of the National Labor Relations Board." (287 F.Supp. at 595.) The opinion in *Borden* actually concludes that exclusive NLRB jurisdiction should result *only* "in the *absence* of an overriding state interest." (373 U.S. at 693; emphasis added.)

Judge Lewis, of the Alaska Superior Court, found that the State had made out a *prima facie* case of systematic discriminatory practices by Local 302. It further found that these practices caused sufficient public harm to result in legitimate concern to the State of Alaska. These findings, together with similar findings in *DeVeau v. Braisted,* 363 U.S. 144 (1960), should have resulted in a holding against federal preemption, both as to the State Court injunction and the Local Autonomy Act. If the State of New York is entitled, as *DeVeau* holds, to clean up its waterfront by prohibiting conduct which is arguably an unfair labor practice, then the State of Alaska is equally entitled to protect its citizens through legislative and judicial remedies.

Unfortunately, the District Court took a narrow view of *DeVeau* by refusing its application on the ground that Congress had approved the New York statute while it has not approved the Local Autonomy Act. There is no *requirement* of congressional approval in *DeVeau* or in any other case, and the constitutional authority of states to regulate labor conduct would be vitiated if this narrow view were permitted to stand.

The ruling of the District Court on the single constitutional issue passed on, is not only in conflict with

Vaca, but is contrary to the wholesome and realistic balance struck between federal and state interests in all preemption cases. The Court below has taken away all rights and remedies which Alaska members of Local 302 might have enjoyed in insuring their seniority rights and their collective and individual rights to be fairly represented by their union, which holds complete and exclusive power of life and death over their ability to make a living. By also removing the sanctions of the Local Autonomy Act, the District Court has encouraged and ratified discriminatory conduct while the State is rendered helpless to cope with serious public harm, the existence of which is not seriously challenged anywhere in this record.

More is involved here than the rights of the parties litigant. The State of Alaska has an important stake in the outcome, and, if the District Court opinion is permitted to remain unchallenged, no possible method exists to protect Alaska from the consequences of Local 302's now unfettered power of economic exploitation. There is and can be no congressional policy against state intervention in such a situation. There is no compelling need to place exclusive jurisdiction with the NLRB, nor can so destructive an inroad into our balanced federal system be justified in the absence of overriding national concerns.

B. OTHER ERRORS OF THE DISTRICT COURT

The State of Alaska below challenged as improvident the empaneling of a three-judge court. The Court below rejected this challenge and also denied a motion by Alaska members of Local 302 for intervention as parties defendant. In addition, part of the judgment purports to uphold the binding validity of a collective bargaining agreement between Local 302 and the Alaska Chapter of Associated General Contractors of America, Inc. However, no such issue appears to be framed by the pleadings, nor is there any finding of fact or conclusion of law or other explanation or rationalization set forth in the opinion to support this portion of the judgment.

Appellants contend that both these rulings and this extraneous part of the judgment constitute error. However, because the constitutional question is clearly substantial, it does not seem necessary to cover these points in this jurisdictional statement, beyond mentioning their existence.

CONCLUSION

The three-judge District Court improperly held that the Alaska Local Union Autonomy Act and the public nuisance action initiated in the Superior Court, by the State of Alaska invade subject matter preempted by Congress. The findings of the State Court demonstrate the existence of an overriding interest on the part of Alaska to assert both legislative and judicial jurisdiction to end long standing policies of deny-

ing to Alaskan residents their right to fair representation by Local 302. The District Court's deviation from existing precedents is harmful to the guidelines of preemption carefully worked out by this Court, particularly those establishing standards for concurrent jurisdiction as set forth in *Vaca v. Sipes* (*supra*).

Appellants earnestly request this Court to deem this case appropriate for plenary consideration and for reversal of the District Court's judgment.

Dated: November 8, 1968.

Respectfully submitted,

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(Appendices A, B, C and D Follow.)